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November 11, 2021

VIA ELECTRONIC MAIL

Kyanna Sabanoglu KSabanoglu@gibsondunn.com
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Re:

BasePoint Administrative, LLC's Objections to Third Party Subpoena
WSOU Investments, LLC v. Dell Tech., Inc., et al., W.D. Tex. No. 6:20-cv-475, etc.

Dear Kyanna and Allen,

Please find attached written objections and responses to the subpoena that Defendants Dell Technologies, Inc., Dell, Inc., and EMC Corporation ("Dell") served on BasePoint Administrative, LLC, in connection with its litigation against WSOU in the Western District of Texas.

As my co-counsel Mr. Millimet noted in his email of 10/8, referencing an earlier conversation between him and Mr. Shelton, Dell's subpoena was not served on the correct entity. The proper entity for service was the lender, BP Funding Trust.

Of more concern than the 'wrong entity' issue, is the fact that our clients have now become aware of—indeed, unhappily embroiled in—disputes between WSOU and certain defendants it has sued for patent infringement in the Western District of Texas, including Microsoft and Google, about the same documents that Dell has also now requested through the instant subpoena.

As you are probably aware, the "agreement for responding to a similar subpoena issued by Google LLC in its litigation with WSOU," which Mr. Millimet mentioned in his 10/8 email, has been set aside. The reason why, was because WSOU informed us that Microsoft recently sought these very same documents set out in Mr. Millimet's 10/8 email, in party discovery it propounded on WSOU, and that Microsoft filed a motion to compel production, which we understand was then denied by Judge Albright. WSOU notified us that it was filing a motion for a protective order concerning these documents in the Western District of Texas.

Google knew that Judge Albright had denied the motion to obtain the very same discovery from WSOU in party discovery in the Microsoft case, because WSOU informed Google of this in a letter. When Mr. Millimet initially reached a deal with Google, he was unaware of all this, and Google failed to mention it.

After WSOU informed us of the ruling in the Microsoft case, and further indicated it would be seeking a protective order in Texas, and explained that the effort to obtain documents from BP Funding Trust was really an attempted end run around Judge

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Albright's prior ruling about these documents in the Microsoft case, Mr. Millimet indicated he would need to talk all this over with our client.

Google responded to Mr. Millimet's hesitation (which was more than appropriate under the change in circumstances) by declaring an emergency, rushing into court in Delaware (the place for compliance with the subpoena) to file a motion to compel, in which Google renounced the prior agreement Mr. Millimet mentioned in his 10/8 email below, and sought to compel BP Funding Trust to produce all of the documents requested in Google's plainly overbroad subpoena. Google moved to compel depositions while ignoring the prior agreement to discuss the need for deposition(s) after receipt of the documents.

We opposed Google's motion to compel, setting out all the above, and asked the Delaware court to transfer all the subpoena-related proceedings back to Judge Albright in Texas per Rule 45(f). WSOU's motion for a protective order concerning these documents in Texas, Google's motion to compel production of them in Delaware, and a joint motion to transfer Google's motion to compel back to Texas under Rule 45(f) are all still pending.

We understand from WSOU's counsel, that Google and Dell claim to be in a joint defense agreement. So, I assume you are aware of all of this. Further, Mr. Shelton, your co-counsel who signed the instant subpoena on BasePoint Administrative for Dell, is also local counsel for Microsoft. We understand that Mr. Shelton was present at the hearing at which Judge Albright denied this same discovery in the Microsoft cases. Please see the attached docket report and ECF notice, indicating that Mr. Shelton was the person tasked with writing up a proposed order memorializing Judge Albright's discovery ruling denying Microsoft's motion to compel as to the BP Funding documents.

BP Funding has also now been subpoenaed by yet another defendant, called ZTE, which served an identical subpoena to the one previously served by Google.

Our client's bottom line is this: Dell, Google, ZTE, and anyone else, all need to work this out directly with WSOU before Judge Albright in Texas. I understand Judge Albright expressed concerns about relevance and burden. A party propounding a subpoena on a third party has an affirmative duty to minimize burden on that third party, and should generally seek discovery from a party before burdening a third party. As far as I am aware, this has not yet been done here by Dell, and we are **not** willing to step past the requirement that Dell make a serious, good faith effort to work all this out with WSOU directly, including by going before Judge Albright, if necessary, before burdening our client, a third party who made a loan years ago that has long since been paid off, with producing documents or testimony.

We are happy to discuss this matter with you further. But we are not going to be producing any documents or witnesses at this time for the reasons set out above and in the attached objections to the subpoena.

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Best regards,



Morgan E. Pietz
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Enclosure(s):

2021.11.11 - Basepoint Administrative LLC Objection to Dell EMC Subpoena

Docket Report and ECF No. 92 in W.D. Tex. No. 6-20-460-ADA